

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**The NATIONAL ORGANIZATION FOR  
MARRIAGE, INC.,**

*Plaintiff,*

v.

**The UNITED STATES OF AMERICA,  
INTERNAL REVENUE SERVICE,**

*Defendant.*

Civ. No. 13-cv-1225-JCC/IDD

**[Proposed] Civil Scheduling Order**

**1. DATE OF CONFERENCE AND APPEARANCES OF COUNSEL AND PRO SE  
PARTIES**

The Pretrial Conference is scheduled for January 8, 2014 at 11:00 A.M. before Magistrate Judge Ivan D. Davis.

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## 2. STATEMENT OF JURISDICTION

The Court has federal question jurisdiction over this action under 26 U.S.C. § 7431 and 28 U.S.C. § 1331 as a federal question.

## 3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff: Plaintiff NOM alleges that individuals employed by the Defendant United States of America inspected and disclosed NOM's confidential tax return and return information, including its 2008 IRS Form 990, Schedule B, which contains the names, home addresses, and contribution amounts of NOM's 2008 major donors, to one or more third parties, including NOM's ideological opponent, the Human Rights Campaign ("HRC"), and to one or more employees, agents, or volunteers of HRC. HRC and the Huffington Post then published the confidential return information on their websites. NOM brings this action pursuant to 26 U.S.C. § 7431 for the recovery of statutory and/or actual and punitive damages caused by Defendant's willful, unauthorized disclosures and inspections of NOM's confidential tax return and return information in violation of 26 U.S.C. § 6103.

b. Defendant: Subject to the defenses listed in its Answer, the United States has admitted that the IRS inadvertently disclosed one copy of Plaintiff's 2008 Form 990 unredacted Schedule B to a single third party, but has denied that the disclosure was either willful or grossly negligent,

or that the disclosure was made to HRC. The United States has also denied that there were any unauthorized inspections of NOM's tax return or tax return information. Based on the evidence at hand, the United States denies that the disclosure caused any actual damages, and because the disclosure was inadvertent, denies that NOM is entitled to punitive damages.

#### **4. COMPUTATION OF DAMAGES**

Plaintiff seeks damages pursuant to 26 U.S.C. § 7431(c) in an amount equal to the greater of: \$1,000 for each act of unauthorized inspection or disclosure of its return or return information; or the sum of the actual damages sustained by Plaintiff as a result of such unauthorized disclosure, plus punitive damages.

1. Actual damages are calculated as follows:
  - a. Lost contributions resulting from Defendant's unauthorized inspection and/or disclosure of Plaintiff's confidential return information in an amount exceeding \$50,000.
  - b. Attorney fees and costs in prosecuting the legal complaint filed with the California Fair Political Practices Commission amount to \$12,500.
2. Punitive damages in an amount to be determined at trial.
3. Costs and attorneys' fees pursuant to 26 U.S.C. § 7431(c).

Defendant: As stated above, the United States denies that the inadvertent disclosure caused any actual damages. Furthermore, because the single disclosure that occurred in this case was inadvertent, the United States denies that Plaintiff is entitled to punitive damages in any amount. Subject to the defenses listed in its Answer, the United States believes that Plaintiff is entitled to statutory damages in the amount of \$1,000, pursuant to 26 U.S.C. § 7431.

#### **5. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FRCP 26(f)**

- a. Date of Rule 26(f) meeting: December 9, 2013
- b. Names of each participant and the party he/she represented:

Jason Torchinsky, Shawn Sheehy, William Davis, and Kaylan Phillips participated on behalf of Plaintiff.

Philip Schreiber, Benjamin Tompkins, and David Moskowitz participated on behalf of Defendant, United States of America.

- c. Statement as to when Rule 26(a)(1) disclosures were made or will be made:

The parties made their Rule 26(a) disclosures on December 20, 2013, per mutual agreement.

- d. Statement concerning any agreements to conduct informal discovery:

None.

- e. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

None.

- f. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

Plaintiff expects that discovery will involve certain electronic communications within or among the Internal Revenue Service, Federal Election Commission, White House, Department of Treasury, and other government agencies.

Defendant has conditionally requested certain electronic discovery from Plaintiff relating to donations Plaintiff may have received as a result of the disclosure of its 2008 Form 990, Schedule B and publicity surrounding that disclosure. The United States does not anticipate extensive ESI discovery in this case.

All parties have instructed their clients to preserve electronically stored information and relevant documents.

- g. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

Plaintiff does not believe a settlement of this matter is likely at this time.

On December 17, 2013, Defendant, pursuant to Rule 68, made an offer of judgment to Plaintiff in the amount of \$1,000 plus costs of this civil action to date (excluding attorneys' fees). The United States believes that a settlement of this matter should be likely, especially given that the United States has admitted, subject to its legal defenses, that an unauthorized disclosure of Plaintiff's tax return occurred.

## **6. CONSENT**

Neither party consents to the exercise of jurisdiction of a magistrate judge.

## **7. DISCOVERY LIMITATIONS**

- a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

None.

- b. Limitations which any party proposes on the length of depositions.

None.

- c. Limitations which any party proposes on the number of requests for production and/or requests for admission.

None.

- d. Other Planning or Discovery Orders

None.

## **8. CASE PLAN AND SCHEDULE**

- a. Parties' Proposed Discovery Plans: By January 1, 2013
- b. Pretrial Conference: January 8, 2014
- c. Deadline for Joinder of Parties and Amendment of Pleadings: January 30, 2014
- d. Expert Witness Disclosure:

At this time, Plaintiff does not anticipate the need for expert witnesses. Plaintiff, however, wishes to reserve the right to call an expert witness should, during the course of discovery, it become apparent that an expert witness for Plaintiff is necessary, in which case Plaintiff would make expert disclosures by January 10, 2014. Defendant has until February 10, 2014 to make its expert disclosures. If Defendant makes expert disclosures, then Plaintiff would have until February 25, 2014 to serve its rebuttal expert disclosures.

- e. Deadline for Serving Interrogatories, Requests for Production of Documents, or Requests for Admissions: February 7, 2014

- f. Discovery Cut-off: March 14, 2014
- g. Final Pretrial Conference: March 20, 2014

### **9. OTHER SCHEDULING MATTERS**

- a. Anticipated length of trial and whether trial is to the court or jury.

Plaintiff anticipates a 5-day trial to the Court.

Defendant anticipates that a bench trial would last no more than 2 days.

Respectfully submitted this 30th day of December, 2013.

/s/ Shawn Sheehy

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